

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 MICHAEL LAMAR RHYMES, }
11 Petitioner, } 3:07-cv-00302-RCJ-VPC
12 vs. }
13 JACK PALMER, *et al.*, }
14 Respondents. }

16 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C.
17 § 2254 by a Nevada state prisoner. On October 20, 2010, an order of dismissal was filed and
18 judgment was entered. (Docket #22 and #23). The basis for the dismissal was mail returned to the
19 Court and petitioner's apparent failure to keep the Court apprised of his current address pursuant to
20 Rule LSR 2-2 of the Local Rules of Special Proceedings and Appeals.

21 Following the filing of the dismissal order and judgment, respondents filed a notice
22 informing the Court that petitioner is housed at Lovelock Correctional Center. (Docket #24).
23 Respondents pointed out that the returned mail (Docket #20) sent by the Clerk of Court, was mailed
24 to P.O. Box 359, Lovelock, Nevada. (Docket #19, Docket #20). However, Lovelock Correctional
25 Center does not have a post office box, and the correct mailing address is 1200 Prison Road,

1 Lovelock, Nevada. On this same basis, petitioner has filed a motion for reconsideration/motion for
2 amendment of judgment. (Docket #27).

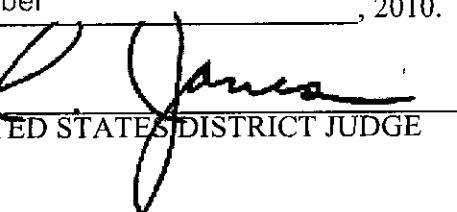
3 Rule 59(e) of the Federal Rules of Civil Procedure provides that any “motion to alter
4 or amend a judgment shall be filed no later than 10 days after entry of the judgment.” Furthermore, a
5 motion under Fed. R. Civ. P. 59(e) “should not be granted, absent highly unusual circumstances,
6 unless the district court is presented with newly discovered evidence, committed clear error, or if
7 there is an intervening change in the controlling law.” *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir.
8 2001), quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). In the instant action,
9 due to a clerical error in the Clerk of Court’s mailing of correspondence to the wrong address, the
10 dismissal order and judgment must be vacated.

11 **IT IS THEREFORE ORDERED** that petitioner’s motion for reconsideration
12 (Docket #27) is **GRANTED**.

13 **IT IS FURTHER ORDERED** that the dismissal order and judgment, filed October
14 20, 2010, (Docket #22 and #23) are **VACATED**.

15 **IT IS FURTHER ORDERED** that the Court’s order on the merits of the petition
16 will be issued in due course.

17 DATED this 29th day of November 2010.

18 
19 UNITED STATES DISTRICT JUDGE